

The Department of Community Planning & Development
City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: September 14, 2005
Re: **ZONING ORDINANCE AMENDMENT(S) – Section 35.1-43.1 Conditional Zone or Zone Approval**

I. PETITIONER

City of Lynchburg, Planning Division

Representative: Mr. Tom Martin, AICP, City Planner, Planning Division, 900 Church Street, Lynchburg, VA 24504

II. LOCATION

The proposed Ordinance Amendments would be Citywide.

Property Owner: Not Applicable

III. PURPOSE

The purpose of the proposed amendment is to allow the Planning Commission and the City Council to consider and accept “cash” proffers as part of conditional rezoning petitions.

IV. SUMMARY

- The *Comprehensive Plan* recommends amending existing development regulations to ensure clarity, ease of interpretation and administration, and effectiveness in promoting high quality development. ***Citywide Land Use & Development, Goal 1, Objective 1.A, pg 5.12***
- Authority for the City of Lynchburg to consider and accept cash proffers as part of a conditional rezoning petition is granted by Chapter 15.2-2298 of the Code of Virginia.

The Planning Division recommends approval of the Zoning Ordinance amendment.

V. FINDINGS OF FACT

Comprehensive Plan. The Lynchburg *Comprehensive Plan* recommends amending existing development regulations to ensure clarity, ease of interpretation and administration, and effectiveness in promoting high quality development. ***Citywide Land Use & Development, Goal 1, Objective 1.A, pg 5.12.*** It is imperative that the City keep its Zoning Ordinance up to date with the Code of Virginia and to consider all alternatives to address the impacts from development.

1. **Zoning.** The City’s Zoning Ordinance was adopted on December 12, 1978. Periodically changes are necessary in order to keep the Ordinance current with the Code of Virginia.
2. **Proffers.** *Not Applicable*
3. **Board of Zoning Appeals (BZA).** *Not Applicable*
4. **Surrounding Area.** The proposed change would allow the Planning Commission and the City Council to consider and accept voluntarily submitted cash proffers for any proposed conditional rezoning in the City of Lynchburg.
5. **Site Description.** *Not Applicable*

6. **Proposed Use of Property.** *Not Applicable*
7. **Traffic and Parking.** *Not Applicable*
8. **Storm Water Management.** *Not Applicable*
9. **Impact.** The proposed Zoning Ordinance amendment would allow the Planning Commission and the City Council to consider and accept voluntarily submitted cash proffers as part of a conditional rezoning petition.

Chapter 15.2-2298 of the Code of Virginia grants the authority to accept cash proffers to any city adjoining a locality which has had a population growth of ten percent or more from the next-to-latest decennial census year, based on population reported by the United States Bureau of the Census. The City of Lynchburg shares its corporate limits with Bedford County which has seen an increase in population from 45,656 in 1990 to 60,371 in 2000 resulting in a thirty-two percent (32%) increase. The City of Lynchburg is also listed in the Report on Proffered Cash Payments and Expenditures by Virginia's Counties, Cities and Towns 2003-2004 as prepared by the Commission on Local Government Commonwealth of Virginia as being a City eligible to accept proffered cash payments.

Cash proffers generally are used to offset the impacts of a particular development by providing funding for new roads, schools, or other public facilities and services. However, the Code of Virginia lists eleven (11) categories for which cash proffers can be accepted. The categories listed are: Schools, Road and other Transportation Improvements, Fire and Rescue/Public Safety, Libraries, Parks, Recreation, and Open Space, Water and Sewer Service Extension, Community Centers, Stormwater Management, Special Needs Housing, Affordable Housing, and Miscellaneous.

If the City chooses to accept cash proffers as part of conditional rezoning petitions, the City must include any facilities related to the development within its Capital Improvement Program (CIP) prior to any land transfers or cash payments being made.

10. **Technical Review Committee.** *Not Applicable*

VI. PLANNING DIVISION RECOMMENDED MOTION (s):

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council the following:

1. **Approval of amending Section 35.1-43.1, Conditional Zone or Zone Approval of the Zoning Ordinance to allow the acceptance of "cash proffers" as part of rezoning petitions as allowed by Chapter 15.2-2298 of the Code of Virginia.**

This matter is respectfully offered for your consideration.

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager

Mr. Walter C. Erwin, City Attorney
Ms. Rachel O. Flynn, Director of Community Planning & Development
Mr. R. Douglas Dejarnette, Fire Marshal
Mr. J. Lee Newland, Director of Engineering
Mr. Gerry L. Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Keith A. Wright, Zoning Official
Mr. Robert S. Fowler, Zoning Official
Mr. Kent L. White, Senior Planner
Ms. Erin M. Bryant, Environmental Planner

VII. ATTACHMENTS

- 1. Zoning Ordinance Revision**
(see attached Ordinance)
- 2. Code of Virginia**
(see attached Code Sections)
- 3. Report on Proffered Cash Payments & Expenditures By Virginia's Counties, Cities & Towns 2003-2004**
(see attached report)

Sec. 35.1-43.1. Conditional zone or zone approval.

(a) Purpose of Conditional Zoning. The purpose of conditional zoning is to provide a method for permitting the reasonable and orderly development and use of land in those situations in which peculiar specific circumstances indicate that the existing zone ordinance district regulations are not adequate. In such instances reasonable conditions voluntarily proffered by the owner of the subject property to which such conditions are applicable for the protection of the community (which conditions are not generally applicable to other land similarly zoned) when considered with existing zoning ordinance district regulations should cause the requested rezoning to be compatible with existing zoning and uses in the area.

(b) Approval of Conditions as part of a Rezoning Amendment to Zoning Map. The owner of the property which is the subject of a rezoning request shall, if he elects to obtain conditional zoning, voluntarily proffer in writing such conditions as he deems appropriate at the time of filing an application to rezone the property or by such later date as the commission shall establish in its rules and regulations; but in any event before the Planning Commission makes its recommendation to City Council.

In the event that additions thereto or modifications thereof are desired by the owner of the property which is the subject of the rezoning request the same shall be made in writing no less than twenty-one (21) days prior to the time at which the Planning Commission makes recommendation to City Council unless the commission:

- (1) Specifically waives such time period; or
- (2) Specifically establishes such greater or lesser time period as it deems reasonable.

City Council may consider additional proffers, deletions, and/or amendments to all such conditions provided same have been voluntarily proffered in writing by the owner of the property which is the subject of the rezoning request prior to advertising the public hearing at which City Council renders its decision thereof.

(c) Permitted conditions as part of a Rezoning or Amendment to Rezoning Map. City Council may approve reasonable conditions to rezoning; provided that the following criteria are met:

- (1) The rezoning itself must give rise to the need for the conditions.
 - (2) Such conditions shall have a reasonable relation to the rezoning.
 - ~~(3) Such conditions shall not include a cash contribution to the City.~~
 - ~~(4) Such conditions shall not require mandatory dedication of real or personal property for open space, parks, schools, fire stations, or other public facilities not otherwise authorized by law.~~
 - ~~(5) Such conditions shall not include payment for or construction of off site improvements except those sewerage or drainage facilities otherwise authorized by law.~~
 - ~~(6) No condition shall be proffered that is not related to the physical development or physical operation of the property.~~
 - ~~(7) (3) All such conditions shall be in conformity with the City's General Plan. Comprehensive Plan.~~
 - ~~(8) (4) The provisions of this ordinance shall not be used for the purpose of discrimination in housing.~~
- (5) If proffered conditions include the dedication of real property or the payment of cash, such property shall not transfer and such payment of cash shall not be made until the facilities for which such property is dedicated or cash is tendered are included in the City's capital improvement program; however, this requirement shall not prevent the acceptance of proffered conditions relating to matters which are not normally included in such capital improvement program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of such property or cash payment in the event the property or cash payment is not used for the purpose for which proffered.
- (6) The City shall within seven years of receiving full payment of all cash proffered pursuant to an approved rezoning application, begin or cause to begin (i) construction, (ii) site work, (iii) engineering, (iv) right-of-way acquisition, (v) surveying, or (vi) utility relocation on the improvements for which the cash payment were proffered.
- (7) Regardless of the date of rezoning approval, unless prohibited by the proffer agreement accepted by the City, the City may utilize any cash payments proffered for capital improvements for alternative improvements of the same category within the City in the vicinity of the improvements for which the cash payments were originally made. Prior to utilization of such cash payments for the alternative improvements, the City shall give at least 30 days' written notice of the proposed alternative improvements to the entity who paid such cash

payment mailed to the last known address of such entity, or if proffer payment records no longer exist, then to the original zoning applicant, and conduct a public hearing on such proposal advertised as provided in Section 35.1-19b of the Zoning Ordinance. The City Council prior to the use of such cash payments for alternative improvements shall, following such public hearing, find (i) the improvements for which the cash payments were proffered cannot occur in a timely manner; (ii) the alternative improvements are within the vicinity of the proposed improvements for which the cash payments were proffered; and (iii) the alternative improvements are in the public interest.

(d) Records of Conditional Zoning.

(1) The zoning map shall show by an appropriate symbol the existence of conditions attached to the zoning.

(2) The ~~Superintendent of Inspections~~ City Planner shall maintain a Conditional Zoning Index which Index shall be available in the ~~Inspections Planning~~ Division Office for public inspection during regular office hours. The Index shall provide ready access to the ordinance creating such conditions in accordance with the article and shall clearly list all conditions applicable to each.

(3) Before any permits can be issued to begin construction or for the occupancy of an existing structure, the petitioner shall file and record in the Office of the Clerk of the Circuit Court of the City of Lynchburg, Virginia, the conditions approved by City Council.

These conditions shall be indexed under the names of the landowners of the property being conditionally zoned. The petitioner shall submit a notarized letter to the Clerk of City Council, the ~~Superintendent of Inspections~~ Building Commissioner and the City Planner certifying that the conditions have been recorded with the Clerk of the Circuit Court.

(4) Within three months of the close of each fiscal year, the City Planner shall report to the Commission on Local Government all information required by Chapter 15.2-2303.2 D of the Code of Virginia.

(e) Enforcement and Guarantees. In order to ensure the intent and purpose of conditional zoning approved in accordance with this article, the ~~Superintendent of Inspections~~ Zoning Administrator or his agents shall be vested with all necessary authority on behalf of City Council to administer and enforce conditions attached to a zoning or amendment or a zoning map including:

(1) Ordering in writing, compliance with such conditions.

(2) Bringing of appropriate legal action or proceeding to ensure compliance.

(3) Requiring a guarantee or contract or both for construction of physical improvements approved as condition(s) of the rezoning.

(4) Denial of zoning certification with regard to the issuance of any required use, occupancy or building permit.

(5) Making an annual compliance report to the City Planner on the anniversary of such approval certifying compliance with such conditions.

(f) Review of ~~Superintendent of Inspections'~~ Zoning Administrators' Decision. Any applicant who is aggrieved by the ~~Superintendent of Inspections'~~ Zoning Administrators' decision or actions under subsection E regarding enforcement of guarantees as provided for in subsection E above may petition the City Council for review of such decision(s). Such petition shall be filed with the ~~Superintendent of Inspections~~ Zoning Administrator no less than thirty (30) days prior to a regularly scheduled meeting of City Council designated for hearing of zoning matters. The ~~Superintendent of Inspections~~ Zoning Administrator shall forward the petition and the justification for his decision(s) to City Council and to the aggrieved person no less than ten (10) days prior to the next regularly scheduled meeting designated for hearing of zoning matters. Written notice of such meeting shall be given to all parties as required by Section 15.1-431 of the Code of Virginia.

(g) Amendments and Variations of Conditions. All amendments and/or variations of adopted conditions shall be made in accordance with provisions of Section 35.1-43 above and other applicable law.

(h) After City Council has taken official action either granting, denying, or permitting withdrawal of a petition for any change in zoning or any change of zoning conditions, no other petitions for substantially the same change(s) shall again be considered in less than twelve (12) months from the date of such official action. (Ord. No. O-80-101, § 2, 4-22-80)